

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
ROBERT W. SULLIVAN )  
dba CROWN CEDAR PRODUCTS, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 1065

**FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

This matter, the appeal of a \$250 civil penalty for an alleged opacity violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Art Brown and Chris Smith, at a formal hearing held in Tacoma, Washington, on December 10, 1976. Hearing examiner William A. Harrison presided.

Appellant appeared by his wife, Mrs. Robert W. Sullivan;  
respondent appeared by and through its attorney, Keith D. McGoffin.  
Gene Barker, Olympia court reporter, provided court reporting services.

Having heard the testimony, examined the exhibits and being

1 fully advised, the Hearings Board makes the following

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed a certified  
5 copy of its Regulation I and amendments thereto, which we notice.

6 II

7 At all times relevant to this appeal the appellant owned and  
8 operated a cedar mill and wood waste burner at 428th Avenue SE and  
9 SE Reinig Road, North Bend, Washington.

10 III

11 At approximately 10:40 AM on July 9, 1976, respondent's  
12 inspector observed emissions of air contaminant, of 100 percent  
13 opacity for six consecutive minutes, emanating from appellant's  
14 wood waste burner.

15 IV

16 Although not relevant to the alleged violation, the following  
17 facts are relevant to the issue of the amount of penalty upon a  
18 finding and conclusion that a violation occurred. Since September 7,  
19 1972, respondent has made numerous contacts with appellant regarding  
20 wood waste burning in violation of respondent's Regulation I. These  
21 contacts included many indications by appellant that he would construct  
22 and utilize an approved burner for the disposal of wood waste. Until  
23 April 1975, these contacts included nine notices of violation, eight of  
24 which resulted in no civil penalties.

25 On April 22, 1975, appellant burned wood waste in violation  
26 of Section 9.02(d)(3) of respondent's Regulation I. On appeal to

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 2

1 this Hearings Board, fines totaling \$500 were sustained, but were  
2 suspended permanently on condition that appellant install an approved  
3 wood waste burner. In ordering that suspension, the Hearings Board  
4 paid particular attention to appellant's financial difficulties caused  
5 by total destruction of the cedar mill by fire in 1972.

6 On June 19, 1975, respondent granted the appellant a variance  
7 to allow time for the submission and approval of plans and the constructio  
8 of an approved wood waste burner. This variance ran until November 30,  
9 1975, and later was extended until February 28, 1976. Plans for  
10 construction of an approved burner were submitted by the appellant and  
11 approved by respondent. To date, respondent has not received the  
12 required Notice of Completion of the wood waste burner which was to have  
13 been constructed according to those plans.

#### 14 V

15 Any Conclusion of Law hereinafter stated which is deemed to be  
16 a Finding of Fact is adopted herewith as such.

17 From these facts, the Pollution Control Hearings Board comes  
18 to these

#### 19 CONCLUSIONS OF LAW

##### 20 I

21 The Hearings Board has jurisdiction over the persons and the  
22 subject matter of this appeal.

##### 23 II

24 The appellant did, on July 9, 1976, cause or allow emissions  
25 of an opacity which violated Section 9.03(b) of respondent's Regulation I.  
6 The \$250 civil penalty assessed pursuant to Section 3.29 is

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 reasonable in amount and should be affirmed.

2 III

3 The respondent has been understanding of and sympathetic to  
4 appellant's financial problems. Appellant must immediately complete  
5 construction of the approved wood waste burner described in the plans  
6 which he submitted or face further enforcement action by Puget Sound  
7 Air Pollution Control Agency.

8 IV

9 Any Finding of Fact herein which is deemed to be a Conclusion  
10 of Law is adopted herewith as such.

11 Therefore, the Pollution Control Hearings Board issues this

12 ORDER

13 The \$250 civil penalty is affirmed, provided however that \$125  
14 of the civil penalty is suspended on condition that appellant  
15 comply with Section 6.09 of respondent's Regulation I by notifying  
16 respondent, within thirty days after the date of this Order, that  
17 construction of an approved wood waste burner has been completed according  
18 to the plans previously submitted.

19 DONE at Lacey, Washington this 17<sup>th</sup> day of January, 1977.

20 POLLUTION CONTROL HEARINGS BOARD

21 Art Brown  
22 ART BROWN, Chairman

23 Chris Smith  
24 CHRIS SMITH, Member

25  
26 (Did not participate)  
W. A. GISSBERG, Member

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CONCLUSIONS OF LAW AND ORDER